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OFFICE OF PETITIONS

In re Application of
Mark A. Shelly
Application No. 10/627,900
Filed: July 25, 2003
Attorney Docket Number: BING-1-1019

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)¹, filed January 14, 2005, to revive the above identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Notice of Informal or Non-responsive amendment, mailed March 26, 2004. A Notice of Abandonment was mailed November 1, 2004.

Petitioner files the instant petition and argues that a timely response to a non-Final office action mailed December 17, 2003, was timely filed and while that appears to be true, the record reveals that a second Notice was mailed for which no response was filed. Petitioner further argues non-receipt of that Notice due to an address change that was not properly communicated to the USPTO until after the March 26, 2004 notice was mailed.

It does not appear however, that a copy of the March 26, 2004 notice can be located amongst USPTO records. Therefore, under the circumstances of this case and for the purposes of this revival only, the requirement for a response to the Notice of Informal or Non-responsive amendment, under 37 CFR 1.137(b)(1) is waived, sua sponte.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

This matter is being referred back to Technology Center 3644 for consideration of the response to the non-Final Office action, previously filed March 15, 2004.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
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